

EXHIBIT

B

UNITED STATES TAX COURT

CAROLINE LOUISE PEKRUL,)	
)	
Petitioner,)	
)	
v.)	Docket No. 10698-18
)	
COMMISSIONER OF INTERNAL REVENUE,)	Filed Electronically
)	
Respondent.)	

MOTION TO DISMISS FOR LACK OF JURISDICTION

RESPONDENT MOVES that this case filed by Petitioner for the years 2000 through 2017, inclusive, be dismissed for lack of jurisdiction on the grounds that 1) this Petition was not filed within the time prescribed by I.R.C. § 6213(a) or § 7502, as it pertains to the Notices of Deficiency issued to Petitioner for the years 2002, 2003, 2004, 2005, and 2006, nor has Respondent made any other determination with respect to those years that would confer jurisdiction on this Court, and 2) Respondent has not made any determination with respect to Petitioner's 2000, 2001, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, or 2017 tax years that would confer jurisdiction on this Court.

IN SUPPORT THEREOF, Respondent respectfully states:

1. On May 31, 2018, Petitioner filed a Petition concerning the above captioned case.

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2. Petitioner checked the boxes on the Petition indicating that she disputes Notices of Deficiency and Notices of Determination.

3. However, in paragraph two of the Petition, she states "N/A- Never received Notice of Deficiency, or Notice of Determination Concerning Collection Action."

4. In paragraph five of the Petition, Petitioner lists the years 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017 as the years for which she never received Notices of Deficiency or Notices of Determination.

5. Petitioner did not attach any Notices of Deficiency or Notices of Determination to the Petition.

I. Untimely Petitioned Years

A. 2002 Tax Year

6. According to Respondent's records, in or around January 2010, Respondent issued a Notice of Deficiency to Petitioner with respect to her 2002 tax year.

7. The 90-day period for timely filing a Petition with this Court from that Notice of Deficiency issued for the year 2002 expired in or around April 2010. Petitioner filed this Petition on May 31, 2018. Thus, Petitioner failed to file her Petition within the 90-day time period.

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8. A copy of an IMFOLT transcript from Respondent's records showing transactions on Petitioner's 2002 Form 1040 account is attached as **Exhibit A**.

9. Transaction Codes, which are the three digit numbers shown on the furthest left column of an IMFOLT transcript, indicates what type of action has occurred on a taxpayer's account. Department of the Treasury, Cat No. 614620, I.R.S. Processing Codes and Information Immediately-Document 6209 (2017). Immediately to the right of the Transaction Code is an eight digit number showing the date the transaction occurred. Id.

10. The 300 Transaction Code on page two of Exhibit A indicates that an assessment was made against Petitioner for her 2002 tax year as a result of an Examination or Appeals adjustment to tax. Id.

11. Below the 300 Transaction Code, there is a Disposal Code appearing as "Disposal-CD:10." Id. Disposal-CD:10 indicates that Petitioner defaulted (failed to respond or Petition) on the Notice of Deficiency. Id. June 14, 2010, the date next to the 300 Transaction Code shows the date the assessment was made as a result of the defaulted Notice of Deficiency. Id.

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12. Respondent waits 120 days from the issuance of a Notice of Deficiency before making an assessment due to default to ensure that the time to file a Petition with the Tax Court has expired. I.R.M. 8.20.6.7.12 (07-01-2016). The 300 Transaction Code date is typically around five months after the date the Notice of Deficiency was issued. Thus, it is likely Respondent issued the Notice of Deficiency to Petitioner for her 2002 tax year in or around January 2010.

B. 2003 Tax Year

13. According to Respondent's records, in or around January 2010, Respondent issued a Notice of Deficiency to Petitioner with respect to her 2003 tax year.

14. The 90-day period for timely filing a Petition with this Court from the Notice of Deficiency issued for the year 2003 expired in or around April 2010. Petitioner filed this Petition on May 31, 2018. Thus, Petitioner failed to file her Petition within the 90-day time period.

15. A copy of a TXMODA transcript from Respondent's records showing transactions on Petitioner's 2003 Form 1040 account is attached as **Exhibit B**. The 300 Transaction Code on page two of Exhibit B with a corresponding Disposal Code of 10 indicates that Petitioner defaulted on the Notice of Deficiency. Department of the Treasury, Cat No. 614620, I.R.S. Processing

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Codes and Information Immediately-Document 6209 (2017). The date next to the 300 Transaction Code indicates that the assessment was made on June 14, 2010. Thus, it is likely Respondent issued the Notice of Deficiency to Petitioner for her 2003 tax year in or around January 2010.

C. 2004 Tax Year

16. According to Respondent's records, in or around February 2010, Respondent issued a Notice of Deficiency to Petitioner with respect to her 2004 tax year.

17. The 90-day period for timely filing a Petition with this Court from the Notice of Deficiency issued for the year 2004 expired in or around May 2010. Petitioner filed this Petition on May 31, 2018. Thus, Petitioner failed to file her Petition within the 90-day time period.

18. A copy of an IMFOLT transcript from Respondent's records showing transactions on Petitioner's 2004 Form 1040 account is attached as **Exhibit C**. The 300 Transaction Code on page four of Exhibit C indicates with a corresponding Disposal Code of 10 that Petitioner defaulted on the Notice of Deficiency. Id. The date next to the 300 Transaction Code indicates that the assessment was made on July 12, 2010. Thus, it is likely Respondent issued the Notice of Deficiency to Petitioner for her 2004 tax year in or around February 2010.

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D. 2005 Tax Year

19. According to Respondent's records, in or around February 2010, Respondent issued a Notice of Deficiency to Petitioner with respect to her 2005 tax year.

20. The 90-day period for timely filing a Petition with this Court from the Notice of Deficiency issued for the year 2005 expired in or around May 2010. Petitioner filed this Petition on May 31, 2018. Thus, Petitioner failed to file her Petition within the 90-day time period.

21. A copy of a TXMODA transcript from Respondent's records showing transactions on Petitioner's 2005 Form 1040 account is attached as **Exhibit D**. The 300 Transaction Code on page five of Exhibit D with a corresponding Disposal Code of 10 indicates that Petitioner defaulted on the Notice of Deficiency. Id. The date next to the 300 Transaction Code indicates that the assessment was made on July 12, 2010. Thus, it is likely Respondent issued the Notice of Deficiency to Petitioner for her 2005 tax year in or around February 2010.

E. 2006 Tax Year

22. According to Respondent's records, in or around February 2010, Respondent issued a Notice of Deficiency to Petitioner with respect to her 2006 tax year.

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23. The 90-day period for timely filing a Petition with this Court from the Notice of Deficiency issued for the year 2006 expired in or around May 2010. Petitioner filed this Petition on May 31, 2018. Thus, Petitioner failed to file her Petition within the 90-day time period.

24. A copy of a TXMODA transcript from Respondent's records showing transactions on Petitioner's 2006 Form 1040 account is attached as **Exhibit E**. The 300 Transaction Code on page five of Exhibit E with a corresponding Disposal Code of 10 indicates that Petitioner defaulted on the Notice of Deficiency. Id. The date next to the 300 Transaction Code indicates that the assessment was made on July 12, 2010. Thus, it is likely Respondent issued the Notice of Deficiency to Petitioner for her 2006 tax year in or around February 2010.

II. No Notices of Deficiency or Determination

25. Respondent has diligently searched his records in an attempt to determine whether a Notice of Deficiency was issued for Petitioner's 2000, 2001, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017 tax years or whether a Notice of Determination was issued to Petitioner for the 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017 tax years.

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26. Based on said diligent search, and based on a review of Respondent's records kept in the ordinary course of business when Respondent issues and mails a Notice of Deficiency and Notice of Determination to a specific taxpayer, there is no record, information, or other evidence indicating that a Notice of Deficiency was mailed to Petitioner with respect to the aforementioned tax years.

27. Accordingly, Respondent has determined, based upon the foregoing, that no Notice of Deficiency sufficient to confer jurisdiction on the Court pursuant to I.R.C. §§ 6212 and 6213(a) has been sent to Petitioner with respect to the taxable years 2000, 2001, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017; and no Notice of Determination sufficient to confer jurisdiction on this Court pursuant to I.R.C. §§ 6320 or 6330 has been sent to Petitioner with respect to taxable years 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017.

28. Respondent has further determined based upon the above-described diligent search that no other determination has been made by Respondent that would confer jurisdiction on this Court.

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29. Petitioner has neither produced, nor otherwise demonstrated, that a Notice of Deficiency, Notice of Determination, or other determination sufficient to confer jurisdiction on this Court was mailed to Petitioner as required by I.R.C. §§ 6213(a) and 6330(d), respectively, and Tax Court Rule 34(b), or other applicable provisions of the Internal Revenue Code or Rules of this Court, instead, she alleges just the opposite—that she has never received a determination that would be sufficient to confer jurisdiction on this Court.

30. Petitioner makes no allegations of error regarding any of the 17 years she claims are at issue.

31. Respondent called Petitioner on July 10, 2018 to obtain her views on this Motion but was unable to reach her.

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WHEREFORE, it is prayed that this Motion be granted.

WILLIAM M. PAUL
Acting Chief Counsel
Internal Revenue Service

Date: JUL 16 2018



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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing MOTION TO DISMISS FOR LACK OF JURISDICTION was served on Petitioner by mailing the same on JUL 16 2018 in a postage paid wrapper addressed as follows:

Caroline Louise Pekarul
P.O. Box 785
Wittmann, AZ 85361

Date: JUL 16 2018



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